

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: J. Malmberg et al. Attorney Docket No.: FRAB122492  
Application No.: 10/798,251 Group Art Unit: 1761  
Filed: March 11, 2004 Examiner: T.F. Simone  
Title: APPARATUS FOR GAS TREATMENT OF PRODUCTS

DECLARATION OF JERALD E. NAGAE UNDER 37 C.F.R. § 1.132

Seattle, Washington 98101

September 2, 2005

TO THE COMMISSIONER FOR PATENTS:

I, Jerald E. Nagae, declare as follows:

1. I am an attorney with the law firm of Christensen O'Connor Johnson Kindness PLLC.

2. I have a clear understanding of the procedure that our law firm strictly abides by when filing patent applications. This procedure is detailed as follows:

(a) A self-addressed, stamped postcard is included with all filings to the U.S. Patent and Trademark Office ("USPTO"), wherein the postcard states: "The following have been received in the U.S. Patent and Trademark Office on the date stamped hereon via Express Mail No. \_\_\_\_\_. " Following this statement is a list of all documents included in the filing. The postcard is prepared by the secretary of the signing patent attorney, with the initials of the preparing secretary and the signing patent attorney typed at the line on the postcard labeled "Atty/Secy:". Both the secretary and attorney are charged with verifying the accuracy of the postcard.

(b) The postcard and the documents to be filed are checked against one another by a second secretary to ensure that all listed documents are included in the filing. After

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checking, the initials of the second secretary are handwritten by the second secretary in the lower right-hand corner of the postcard.

(c) Copies of all documents filed with the patent application, including the patent application, are placed in a designated section of our internal patent application file.

(d) The postcard and the listed original documents are mailed to the USPTO, wherein the postcard is marked as received by the USPTO (as indicated by inclusion of a bar code, patent application number, and filing date) and returned to the law firm.

3. The postcard, a copy of which is herein enclosed as Exhibit A, listing all documents in the March 11, 2004 filing, including "Unsigned Declaration and Power of Attorney (3 pages)," was prepared by my secretary, Hilda J. DeGraaff, as indicated by our typed initials "JEN:hjd".

4. The postcard and the filing documents were checked against one another, including "Unsigned Declaration and Power of Attorney (3 pages)," by Pam Tucker, as indicated by her initials, handwritten in the lower right-hand corner: "pt".

5. The postcard and the filing documents were additionally checked by me when I signed the filing documents, including the Transmittal Letter which lists an "unsigned Declaration and Power of Attorney."

6. The postcard was received in the USPTO and marked received, as indicated by the inclusion of a bar code, Application No. "10/798251," and filing date of "031104" (March 11, 2004).

7. Copies of all filing documents mailed to the USPTO have been filed in the proper designated section of our internal patent application file, copies of which are herein enclosed as Exhibit B. The documents include an unsigned "Combined Declaration and Power of Attorney in Reissue Patent Application," with the following language:

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We believe the original patent to be wholly or partly inoperative or invalid for the reason that the patentees claimed less than they had the right to claim in the patent. Specifically, the error in the patent upon which the reissue is based is found in the claims, wherein, for example, Claim 1 includes the words "positioned in the return channel (13)." *The foregoing language inadvertently and unnecessarily, limits the scope of the claimed invention and, therefore, such an error results in the patentees claiming less than they had the right to claim.* Accordingly, the Preliminary Amendment filed herewith introduces new Claims 17-36.

(Emphasis added.)

8. I received a "Notice to File Missing Parts of Reissue Application" from the USPTO, mailed May 14, 2004, a copy of which is herein enclosed as Exhibit C, which verifies that the unsigned declaration was received by the USPTO, stating "[t]he oath or declaration is unsigned."

9. Based on the checking of three individuals (Hilda J. DeGraaff, Pam Tucker, and me); the copy of our designated section in our internal patent application for documents filed with the USPTO on March 11, 2003 (Exhibit B); our returned postcard from the USPTO stating, "The following have been received in the U.S. patent and Trademark Office on the date stamped hereon..." and stamped with Application No. "10/798251" and filing date of 031104" (March 11, 2004) (Exhibit A); and the "Notice to File Missing Parts of Reissue Application" mailed by the USPTO on May 14, 2004, verifying that the unsigned declaration was received (Exhibit C), I hereby declare with certainty that the unsigned "Combined Declaration and Power of Attorney in Reissue Patent Application" was filed on March 11, 2004, with our reissue patent application including language establishing an intent to broaden.

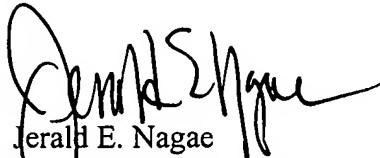
10. I hereby declare that all statements made herein from my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United

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States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>



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